

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF AUTO DEPOSITION)
SITE CHICAGO, ILLINOIS)
)
SETTLING RESPONDENT)
)
GREENFIELD PARTNERS, LTD.)
)
UNDER THE AUTHORITY OF THE)
COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT OF 1980, 42 U.S.C.)
§ 9601, et seq., as amended)

Docket No.

V-W- '97-C-415

AGREEMENT AND COVENANT NOT TO SUE

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Greenfield Partners, Ltd. ("Greenfield Partners" or "Settling Respondent") (collectively, the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. The Assistant Attorney General of the Environment and Natural Resources Division approves this Agreement pursuant to the inherent settlement authority of the Attorney General to settle claims of the United States, as delegated.

EPA conducted an emergency removal action, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, from June, 1995 through January, 1996, at the Site (as herein defined). The response actions taken by EPA at the Site included: (1) limiting access; (2) cleaning and sealing of bricks and mortar leaching chromic acid; (3) removal of certain wall portions contaminated with chromic acid; (4) excavation of visibly stained soils; (5) removal and disposal of all plating wastes contained in vats, tanks and other containers; (6) cleaning of reusable plating equipment; (7) removal of friable asbestos from all areas of the Site Property except the basement; and (8) soil sampling. EPA disposed of 250 cubic yards of material determined to be F008 and D007 hazardous waste; 18,700 gallons of D002 chromic and nickel liquid wastes; 5,500 gallons of D002 corrosive liquid wastes; 1,720 gallons of D001 flammable waste; 30 cubic yards of friable asbestos, and 1,660 gallons of cyanide wastes. EPA incurred more than \$400,000 in response costs associated with the removal action at the Site.

Greenfield Partners, an Illinois corporation located at 1401 West Wabansia Avenue, Chicago, Illinois, wishes to purchase the Site Property (as herein defined) and develop it for subsequent purchase and use by Adjustable Clamp Company in

the operation of that company's metal manufacturing and distribution business.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII, IX, X, and XI, the potential liability of the Settling Respondent for the Existing Contamination at the Site (as such terms are herein defined) which could otherwise result from Settling Respondent becoming the owner or operator of the Site.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them

in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing at, on or under the Site as of the effective date of this Agreement.

3. "Parties" shall mean EPA and the Settling Respondent.

4. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. (also known as the Resource Conservation and Recovery Act).

5. "Settling Respondent" shall mean Greenfield Partners and its officers, directors, and shareholders when acting in those respective capacities.

6. "Site" shall mean the Site Property (as herein defined) and all areas at which Existing Contamination is presently located, or ultimately comes to be located.

7. "Site Property" shall mean the Auto Deposition site, formerly encompassing a one-story warehouse building of approximately 38,000 square feet, located at 1518 West Hubbard

Avenue in the City of Chicago, Cook County, Illinois and set forth in the legal description attached as Exhibit 1.

8. "Statement of Work" or "SOW" shall mean that certain document entitled, "Work Plan and Health Safety Plan: Auto Deposition Site; 1518 West Hubbard Street, Chicago, Illinois," which is attached as Exhibit 2.

9. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

10. "Work" shall mean all actions to be taken by or on behalf of Settling Respondent as set forth in the SOW.

III. STATEMENT OF FACTS

11. On June 29, 1995, EPA initiated a removal action at the Site. As stated above, during EPA's removal action, hazardous substances and other pollutants and contaminants were analyzed, consolidated for disposal, and disposed of off-site.

12. EPA completed the removal action in January, 1996. EPA's removal action resulted in the abatement of the imminent and substantial threat to human health and the environment posed by the hazardous substances at the Site. Additionally, in October 1996, a fire destroyed most of the improvements on the Site Property. Following the fire, EPA and the City of Chicago jointly caused further cleanup to be

conducted. Hazardous substances, pollutants and contaminants remain at the Site. Such substances, pollutants and contaminants include but may not be limited to, metals and volatile organic compounds in the floor of the improvements on the Site Property and in soils at the Site, as well as heating oil from underground storage tanks storing heating oil for consumptive use on the premises where stored.

13. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent's involvement with the Site has been limited to the following: participation in negotiations with various persons who have interests in the Site Property; and examination of the environmental condition of the Site Property for the purpose of drafting the SOW.

IV. WORK TO BE PERFORMED

14. EPA hereby approves the SOW (attached hereto as Exhibit 2), which is incorporated into this Agreement by reference. In consideration of and in exchange for the benefits of this Agreement, including but not limited to the United States' Covenant Not to Sue in Section IX, Settling Respondent agrees to cause the Work to be performed within eighteen months of the effective date of this Agreement, or such other date as

the Parties may hereafter agree in writing. The Parties agree that the current estimated fair market value of the Work is approximately \$140,000. Settling Respondent further agrees to cause a deed restriction to be placed on the Site Property limiting the use of the Site Property to commercial, industrial, office, and retail purposes; subject to the possible future removal of such deed restriction as set forth in Paragraph 37 of this Agreement.

V. RELEASE OF LIEN

15. As soon as practicable, but in no event later than ninety (90) days following the effective date of this Agreement, EPA shall, at its sole expense: i) release all liens it has placed on the Site Property pursuant to 42 U.S.C. § 9607(1); ii) record such releases; and iii) produce file-stamped copies of such releases to Settling Respondent following recordation.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

16. Commencing upon such date that Settling Respondent obtains the rights to do so, Settling Respondent agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at

all reasonable times to the Site Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Site. EPA agrees to use reasonable effort to minimize any interference with the Settling Respondent's operations by such entry. Notwithstanding any provision of this Section VI, EPA retains all of its authorities and rights to gain access to the Site Property, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

17. Within thirty (30) days after the date upon which Settling Respondent acquires title to the Site Property, or causes the title to the Site Property to be conveyed to Adjustable Clamp Company, whichever is earlier, the Settling Respondent shall cause a certified copy of this Agreement to be recorded with the Cook County Recorder's Office, State of Illinois. Thereafter, each deed, title or other instrument

conveying an interest in the Site Property by the Settling Respondent shall contain the following notice:

This Property is subject to an Agreement and Covenant Not to Sue between Greenfield Partners, Ltd., or its assignees or successor in interest, and the United States Environmental Protection Agency. A certified copy of this Agreement is on file with the Cook County Recorder's Office, State of Illinois.

18. The Settling Respondent shall provide a copy of this Agreement to any current lessee or sublessee on the Site Property as of the effective date of this Agreement, and shall attach a copy of this Agreement to any subsequent lease, sublease, assignment or transfer of the Site Property or an interest in the Site Property entered into by the Settling Respondent.

VII. DUE CARE/COOPERATION

19. The Settling Respondent shall exercise due care at the Site Property with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site by EPA may interfere with the Settling Respondent's use of the Site Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the

implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, and minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA or such release or threatened release.

VIII. CERTIFICATION

20. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information

in the possession, or control of its officers, directors, employees, contractors and agents which relates in any way to the Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and its qualification to enter into this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

IX. UNITED STATES' COVENANT NOT TO SUE

21. Subject to Section X (Reservation of Rights) and Section XII (Parties Bound/Transfer of Covenant) upon the effective date of this Agreement, the United States covenants not to sue or take any other civil or administrative action for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or 9607(a), or Section

7003 of RCRA, 42 U.S.C. § 6973, against Settling Respondent, and/or any assignee, transferee, lessee or sublessee for: (i) any response costs incurred or response actions taken by the United States with respect to the Site prior to the effective date of this Agreement; or (ii) any response actions to be taken or response costs to be incurred by the United States with respect to the Existing Contamination after the effective date of this Agreement.

X. RESERVATION OF RIGHTS

22. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Work to Be Performed), Section VI (Access/Notice to Successors in Interest), and Section VII (Due Care/Cooperation);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants (including such releases caused by exacerbation of Existing Contamination) at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or subleases;

(c) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(d) criminal liability;

(e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(f) liability for violations of local, state, or federal law or regulations.

23. With respect to any claim or cause of action asserted by the United States alleging a release or threat of release of hazardous substances, pollutants, or contaminants at the Site after the effective date of this Agreement and

not within the definition of Existing Contamination, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

24. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, or corporation, other than the Settling Respondent and all assignees, transferees, lessees and sublessees who comply with Paragraph 31 of this Agreement.

25. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel persons other than the Settling Respondent and all assignees, transferees, lessees and sublessees who comply with Paragraph 31 of this Agreement, to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal

law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

26. In consideration of the United States' Covenant Not to Sue in Section IX of this Agreement and the release of the lien perfected by EPA on the Site Property in accordance with Section V, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b) (2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

27. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700 (d).

XII. PARTIES BOUND/TRANSFER OF COVENANT

28. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

29. All of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person who complies with Paragraph 31.

30. In the event of an assignment, transfer, lease, or sublease of the Site Property or an assignment or transfer of an interest in the Site Property, the assignor, transferor, lessor, or sublessor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except as EPA and the assignor, transferor, lessor, or sublessor agree otherwise and modify this Agreement, in writing, accordingly.

31. Prior to or simultaneous with any assignment transfer, lease or sublease of the Site Property, or the assignment, transfer, lease, or sublease of an interest in the Site Property, the assignee, transferee, lessee, or sublessee must provide notice of the transaction to EPA in which it consents in writing to assume all responsibilities of the Settling Respondent under this Agreement, including but not limited to Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), and Section VIII (Certification) in order for the benefits of this Agreement, including but not limited to the Covenant Not to Sue in Section IX, to be available to that party; provided that neither payment to the United States, nor additional remediation of Existing Contamination beyond that required by

the SOW shall be necessary to obtain the benefits of this Agreement, including but not limited to the Covenant Not to Sue in Section IX. The benefits of this Agreement, including but not limited to the Covenant Not to Sue in Section IX, shall not be effective with respect to any assignee, transferee, lessee, or sublessee that fails to provide such written consent to EPA. Moreover, the benefits of this Agreement, including but not limited to the Covenant Not to Sue in Section IX, shall not be effective with respect to any assignee, transferee, lessee, or sublessee who was, at any time prior to the effective date of this Agreement in the category of persons described in Section 107(a)(1)-(4) of CERCLA, 42 U.S.C. § 9607(a)(1)-(4), with respect to the Site Property.

XIII. DISCLAIMER

32. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XIV. DOCUMENT RETENTION

33. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigation, and documents relating to operations at the Site, for at least three years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of three years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. PAYMENT OF COSTS

34. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Work to be Performed), it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XVI. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Agreement, notice is required to be given or a document sent by one Party to another, it shall be directed to the individuals at the addresses specified below.

As to EPA

Andrew J. Warren
Assistant Regional Counsel
U.S. EPA
77 West Jackson Boulevard
Mail Code C-29A
Chicago, Illinois 60604-3590

As to Settling Respondent

Robert N. Rafson
Greenfield Partners, Ltd.
1401 West Wabansia Street
Chicago, Illinois 60622

XVII. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received; provided that this Agreement shall become null and void and have no effect in the event that Settling Respondent does not cause the Work to be performed within eighteen months of the effective date of this Agreement, or such other date as the Parties may hereafter agree in writing.

XVIII. TERMINATION

37. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with

the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s). The deed restriction which is addressed in Section IV (Work to be Performed) may be removed in the event that it is demonstrated to the EPA Region V Superfund Division or its successor that conditions on the Site Property satisfy requirements for property uses barred by the deed restriction, which requirements are applicable or relevant and appropriate at the time of such demonstration.

XIX. CONTRIBUTION PROTECTION

38. With regard to claims for contribution against Settling Respondent and/or any assignee, transferee, lessee and/or sublessee, who complies with Paragraph 31 of this Agreement, the Parties hereto agree that the Settling Respondent and all assignees, transferees, lessees, and subleases who comply with Paragraph 31 of this Agreement are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2)

for matters addressed in this Agreement. The matters addressed in this Agreement are: (i) all response actions taken and response costs incurred by the United States or any other person with respect to the Site prior to the effective date of this Agreement; and (ii) all response actions to be taken and response costs to be incurred by the United States or any other person with respect to any Existing Contamination after the effective date of this Agreement.

39. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

40. The Settling Respondent also agrees with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within ten (10) days of service of the complaint on them.

XX. EXHIBITS

41. Exhibit 1 shall mean the legal description of the Site Property. Exhibit 2 shall mean the SOW.

XXI. PUBLIC COMMENT

42. This Agreement shall be subject to a thirty (30)-day public comment period and a public meeting, if requested, pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). EPA may withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

GREENFIELD PARTNERS, LTD.

BY:



Robert N. Rafson
Vice President

4/17/97
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Valdas V. Adamkus
Regional Administrator
Region V

Date

UNITED STATES DEPARTMENT OF JUSTICE

BY:


Lois J. Schiffer

Assistant Attorney General
Environment and Natural Resources Division

5/12/97
Date

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GREENFIELD PARTNERS, LTD.

BY:



Robert N. Rafson
Vice President

4/17/97
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Valdas V. Adamkus
Regional Administrator
Region V

Date

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division

Date

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GREENFIELD PARTNERS, LTD.

BY:

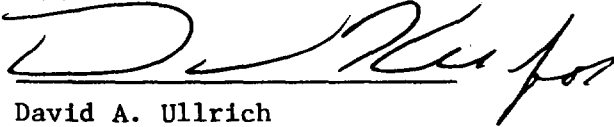


Robert N. Rafson
Vice President

4/17/97
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



David A. Ullrich
Acting Regional Administrator
Region V

7/15/97
Date

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division

Date

agreen5.cer 4/17/97

ORDER NO.: 1401 007627779 D2

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

LOTS 22 TO 32 INCLUSIVE IN WALLER'S SUBDIVISION OF BLOCK 16 IN BICKERDIKE'S
ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 8, TOWNSHIP
39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY ILLINOIS.

TAX ID #'S 17-08-130-019 THK 17-08-13-026

WORK PLAN AND HEALTH & SAFETY PLAN

**AUTO DEPOSITION SITE
1518 WEST HUBBARD STREET, CHICAGO ILLINOIS**

PREPARED BY:

**RAFSON ENGINEERING
1401 W. WABANSIA STREET
CHICAGO, ILLINOIS 60622**

FEBRUARY 1997